



REPUBLIC OF KENYA



KENYA LAW
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**Ndung'u v Republic (Criminal Application E073 of 2025)
[2025] KECA 1910 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1910 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPLICATION E073 OF 2025
PM GACHOKA, JA
NOVEMBER 12, 2025**

BETWEEN

ELIJAH KAMAU NDUNG'U APPLICANT

AND

REPUBLIC RESPONDENT

*(An application for leave to appeal out of time against the conviction
and sentence by the High Court of Kenya at Naivasha (G. Nzioka,
J.) delivered on 30th June 2025 in HCCRA No. E045 of 2024)*

RULING

1. In his Notice of Motion dated 2nd August 2025, the applicant seeks the leave of this Court to appeal out of time against the conviction and sentence upheld by the High Court sitting at Naivasha in HCCRA No. E045 of 2024. In Naivasha CMC Criminal Case (SO) No. E085 of 2021, the applicant was charged with the offence of defilement contrary to section 8 (1) as read together with section 8 (2) of the *akn ke act 2006 3 Sexual Offences Act*. The matter went for full trial where the applicant was convicted and sentenced to 30 years imprisonment on 18th December 2024. That conviction was affirmed and the sentence upheld by the High Court (Nzioka, J.) on 30th June 2025.
2. It is those findings that have galvanized the applicant to file the present application. It is supported by his affidavit sworn on 2nd August 2025. Laudably, he annexed the impugned judgment to his application. He has urged this Court to consider that he was not furnished with the judgment timeously to enable him file his appeal on time. That he was only in receipt of it on 1st August 2025. He prayed that his application be allowed because he had strong grounds of appeal and that the respondent would not be prejudiced if the orders sought are granted.
3. The application was canvassed by way of written submissions.



The applicant filed his written submissions dated 7th November 2025. He reiterated the contents of his application praying that leave be allowed to file his appeal out of time.

4. Senior Assistant Director of Public Prosecutions Mr. Omutelema filed written submissions dated 3rd November 2025 on behalf of the respondent. He did not oppose the application for the reason that the explanation for the delay was satisfactory.
5. Rule 4 of this Court's rules provides that the Court may extend the time limited by these Rules for the doing of any act authorized or required by the Rules, whether before or after the doing of the act, and a reference in these Rules to any such time shall be construed as a reference to that time as extended.
6. I have considered the application, the supporting affidavit, the period of delay, the respondent's submissions and the law. The applicant has adequately explained that he was furnished with the impugned judgment on 1st August 2025. He thereafter moved with speed to file the present application on 2nd August 2025. I find that the applicant is deserving of the exercise of this Court's discretion. For those reasons, I direct the applicant to file his notice of appeal within 14 days from the date of this order. Thereafter, the record of appeal shall be filed and served within 30 days.

DATED AND DELIVERED AT NAKURU THIS 12TH DAY OF NOVEMBER 2025.

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

Deputy Registrar

